

Pro se Petitioner Johnnie Brown seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging his September 7, 2000 conviction, after a jury trial in Supreme Court, New York County, of one count of course of sexual conduct against a child in the second degree, in violation of N.Y. Penal Law § 130.80, and one count of endangering the welfare of a child, in violation of N.Y. Penal Law § 260.10, for which he was sentenced to concurrent prison terms of seven years and one year, respectively. His Petition pleads three grounds for relief. His first two claims relate to the trial court's ruling that precluded Petitioner's counsel from cross-examining the child victim regarding allegations of sexual molestation she had made about her two stepbrothers. Petitioner claims that this restriction on cross-examination constituted a violation of his constitutional rights (1) to due process, and (2) to confront his accuser. Petitioner also alleges, in a third claim, that his sentence was excessive. In a memorandum filed January 31, 2005, Respondent argues that the Petition should be dismissed because the first and second claims are without merit and his third claim is not cognizable on habeas review.

This case was referred by Judge Michael B. Mukasey to United States Magistrate Judge Debra Freeman, who issued her Report and Recommendation (“R&R”) on December 5, 2007, recommending that Respondent’s motion to dismiss be granted. The Magistrate Judge provided ten days for written objections, pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), and specifically advised that the failure to file objections “will result in a waiver of objections for purposes of appeal.” (R&R 31-32). No objections have been filed. This case was reassigned to this Court on October 16, 2006.

DISCUSSION

“To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). Upon review and analysis, the Court finds no clear error in Magistrate Judge Freeman’s determinations that:

- 1) the Appellate Division’s rejection of Petitioner’s challenge to the trial court’s preclusion of cross-examination concerning the minor victim’s prior accusations was neither contrary to nor an unreasonable application of clearly established federal law; and
- 2) Petitioner’s excessive sentence claim does not provide a basis for federal habeas relief.

Accordingly, the Court accepts and adopts the Report and Recommendation as its opinion, and Petitioner’s habeas petition is DENIED. Pursuant to 28 U.S.C. § 1915(a)(3), I find that any appeal from this order would not be taken in good faith.

Petitioner did not file objections to the Report and Recommendation, as he was required to do in order to preserve his right to appeal.

The Clerk of the Court is directed to enter an Order closing this case.

Dated: New York, New York
March 31, 2008

SO ORDERED

PAUL A. CROTTY
United States District Judge

Copies To:

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Gouverneur, NY 13642

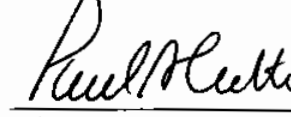
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